

§ 1717.616

7 CFR Ch. XVII (1–1–14 Edition)

§ 1717.616 Sale, lease, or transfer of capital assets.

A distribution borrower may without the prior approval of RUS sell, lease, or transfer any capital asset if the following conditions are met:

- (a) The borrower is not in default;
- (b) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1 in each case based on the average or the best 2 out of the 3 most recent years;
- (c) The sale, lease, or transfer of assets will not reduce the borrower's existing or future requirements for energy or capacity being furnished to the borrower under any wholesale power contract which has been pledged as security to the government;
- (d) Fair market value is obtained for the assets;
- (e) The aggregate value of assets sold, leased, or transferred in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the transaction;
- (f) The proceeds of such sale, lease, or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately:
 - (1) Applied as a prepayment of all notes secured under the mortgage equally and ratably;
 - (2) In the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the borrower's utility business; or
 - (3) Applied to the acquisition of construction of utility plant.

[60 FR 67405, Dec. 29, 1995, as amended at 65 FR 51748, Aug. 25, 2000]

§ 1717.617 Limitations on distributions.

If a distribution or power supply borrower is required by its loan documents to obtain prior approval from RUS before declaring or paying any dividends, paying or determining to pay any patronage refunds, or retiring any patronage capital, or making any other cash distributions, such approval is hereby given if the following conditions are met:

- (a) After giving effect to the distribution, the borrower's equity will be

greater than or equal to 30 percent of its total assets;

- (b) The borrower is current on all payments due on all notes secured under the mortgage;

- (c) The borrower is not otherwise in default under its loan documents; and

- (d) After giving effect to the distribution, the borrower's current and accrued assets will be not less than its current and accrued liabilities.

Subpart N—Investments, Loans, and Guarantees by Electric Borrowers

AUTHORITY: 7 U.S.C. 901–950b; Pub.L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*); Title I, Subtitle D, Pub.L. 100–203, 101 Stat. 1330.

SOURCE: 60 FR 48877, Sept. 21, 1995, unless otherwise noted.

§ 1717.650 Purpose.

This subpart sets forth general regulations for implementing and interpreting provisions of the RUS mortgage and loan contract regarding investments, loans, and guarantees made by electric borrowers, as well as the provisions of the Rural Electrification Act of 1936, as amended, including section 312 (7 U.S.C. 901 *et seq.*) (RE Act), permitting, in certain circumstances, that electric borrowers under the RE Act may, without restriction or prior approval of the Administrator of the Rural Utilities Service (RUS), invest their own funds and make loans or guarantees.

§ 1717.651 General.

- (a) *Policy.* RUS electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to RUS and other lenders. In considering whether to make loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve. RUS assumes that borrowers will use the latitude afforded them by section 312 of the RE Act primarily to make needed